IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 28175 of 2007(D)

PETITIONER:

A.ABDUL KAFFAR,
KARYATTU BUNGALOW, AUVANEESWARAM R.S. P.O.,
KUNNICODE, KOLLAM DISTRICT.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE PRINCIPAL SECRETARY TO GOVERNMENT,
TAXES (D) DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

3. JOINT COMMISSIONER-I,
O/O. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

4. THE SECRETARY TO GOVERNMENT,
TAXES (D) DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. BEJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J

W.P.(C).28175/2007

Dated this the 16th day of November, 2007

JUDGMENT

The petitioner, who was working as an Assistant Commissioner, entered service in the Department of Agricultural Income Tax in the year 1976 as an Assistant Sales Tax Officer. He was then promoted to the post of Sales Tax Officer and thereafter as Assistant Commissioner in 1989. He was prosecuted for an offence under the Prevention of Corruption Act and ultimately he was convicted for a period of two years imprisonment by the Enquiry Commissioner and Special Judge. The conviction and sentence was upheld by this Court and the petitioner underwent imprisonment. Taking note of his conviction in a criminal case, he was dismissed from service as per Ext.P1. Therefore, he is dis-entitled for regular pension.

2. Petitioner refers to Rule 5(a) of Section II of Part-III, KSR which enables the Government to grant compassionate allowance to the persons who are not

eligible for regular pension. Petitioner applied for his compassionate allowance and as per Ext.P8, the petitioner was intimated by the Finance Department that they are agreeable for the sanction of compassionate allowance at the rate of minimum pension of Rs.2,400/- from the date of order, which has the approval of Minister of Finance. In the meanwhile petitioner was informed by Ext.P9 order that his request had been considered in detail and Government is of the opinion that he does not deserve any special consideration as per Rule 5(a) Part-III KSR and his request for compassionate allowance was, therefore, rejected. Ext.P9 is under challenge in this writ petition. By consent, I have taken up the writ petition for final consideration.

3. It is true that granting of compassionate allowance is not a matter of right but one of discretions. The same matter is considered by the Division Bench of this Court in **Thankappan Nair v. State of Kerala (2001 (3) KLT 855).**

4. I have considered Ext.P9 order. I have also noted Ext.P8 which apparently conveys the willingness of the Finance Department for granting of compassionate allowance to the petitioner. In my view, the discretion to be exercised under Rule 5(a) has not been properly exercised, in the light of the law that is laid down in Thankappan Nair's case.

5. In the circumstances, this writ petition is disposed of directing the Government to pass fresh orders on the petitioner's application, Ext.P2, for compassionate allowance untrammeled by Ext.P9, within a period of three months from the date of receipt of a copy of this judgment, keeping in mind the law laid down by this Court in the case cited supra.

V.GIRI
Judge

mrcs